

National Assembly for Wales
Constitutional and Legislative
Affairs Committee

Report on the Well-being of Future Generations (Wales) Bill

November 2014



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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The Constitutional and Legislative Affairs Committee

The Committee was established on 15 June 2011 with a remit to carry out the functions of the responsible committee set out in in Standing Orders 21.2 and 21.3 and to consider any other legislative matter, other than the functions required by Standing Order 26, referred to it by the Business Committee.

Current Committee membership



David Melding (Chair)
Deputy Presiding Officer
Welsh Conservatives
South Wales Central



Suzy Davies
Welsh Conservatives
South Wales West



Alun Davies
Welsh Labour
Blaenau Gwent



William Powell
Welsh Liberal Democrats
Mid and West Wales



Simon Thomas
Plaid Cymru
Mid and West Wales

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The Committee's Recommendations

Recommendation 1. we recommend that the Minister considers tabling an amendment to the short title of the Bill to provide a more factual description of its content. (Page 20)

Recommendation 2. we recommend that the Minister reviews the Bill with a view to tabling amendments that clarify the purpose of the Bill. (Page 20)

Recommendation 3. as part of reviewing the clarity of the Bill under recommendation 2, we suggest the Minister considers in particular:

- the accuracy of the long-title;
 - sections 1-3;
 - including definitions of “well-being” and “needs”;
 - clarifying how the concept of improvement is to be measured.
- (Page 20)

Recommendation 4. we recommend that, if, as a consequence of recommendations 2 and 3, the Minister tables a significant number of amendments to the Bill at Stages 2 and 3, he should provide the Assembly with the opportunity to consider the Bill at Report Stage. (Page 20)

Recommendation 5. we recommend that during the Stage 1 debate, the Minister addresses concerns, raised by the Auditor General for Wales, regarding the potential conflict between the Bill and the *Local Government (Wales) Measure 2009*. (Page 20)

Recommendation 6. we recommend that the Minister should table an amendment to the Bill applying the affirmative procedure to the making of national indicators under section 11. (Page 23)

Recommendation 7. we recommend that the Minister should table an amendment to the Bill to apply the affirmative procedure to the making of regulations under section 21. (Page 24)

Recommendation 8. we recommend that the Minister should review section 23 of the Bill, with a view to tabling amendments to remove any unnecessary provisions. (Page 25)

Recommendation 9. we recommend that the Minister should table an amendment to the Bill to apply the affirmative procedure to the making of regulations under section 31 that amend section 30(1). (Page 26)

Recommendation 10. we recommend that the Minister should table an amendment to apply section 39 of the Bill to all community councils, irrespective of their income or expenditure. (Page 27)

Recommendation 11. we recommend that the Minister should table an amendment to section 52(1) of the Bill to delete the words “in connection with” and insert in their place “in consequence of”. (Page 28)

Recommendation 12. we recommend that the negative procedure is applied to orders made in accordance with section 55(4)(b) of the Bill. (Page 29)

1. Introduction

The Committee's remit

1. The remit of the Constitutional and Legislative Affairs Committee (“the Committee”) is to carry out the functions of the responsible committee set out in Standing Order 21 and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or the Welsh Ministers.
2. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.
3. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

Introduction and consideration of the Bill

4. On 7 July 2014, Jeff Cuthbert AM, the former Minister for Communities and Tackling Poverty, introduced the Well-being of Future Generations (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum.¹ Carl Sargeant AM, the Minister for Natural Resources (“the Minister”) was authorised as the Member in charge of the Bill by the First Minister following a Cabinet reshuffle in September 2014.
5. The Assembly’s Business Committee referred the Bill to the Environment and Sustainability Committee for consideration setting a deadline of 22 November 2014 to report on its general principles.
6. The Constitutional and Legislative Affairs Committee considered the Bill at its meeting on 6 October 2014, taking evidence from the Minister.

¹ Welsh Government, *Well-being of Future Generations (Wales) Bill, Explanatory Memorandum Incorporating the Regulatory Impact Assessment and Explanatory Notes*, July 2014

7. At the meeting, the Minister provided a document explaining the architecture of the Bill and this is attached at Annexe 1.

2. Background

Purpose of the Bill

8. The Explanatory Memorandum describes the Bill as strengthening:

“... existing governance arrangements for improving the well-being of Wales in order to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (the sustainable development principle). It identifies well-being goals which specified public authorities are to seek to achieve in order to improve the well-being of Wales both now and in the future.

The Bill sets out how those authorities are to show that they are working towards the well-being goals. It also, through the introduction of national indicators, ensures that the difference being made to the well-being of Wales will be evaluated and measured.

The Bill establishes a Future Generations Commissioner for Wales to be an advocate for future generations who will advise and support specified public authorities in carrying out their duties under the Bill. It also puts Local Service Boards (to be known as Public Services Boards) and well-being plans on a statutory basis and, in doing so, simplifies current requirements as regards integrated community planning.”²

9. The Explanatory Memorandum states that the Bill’s policy intent is to:

“... give effect to the Welsh Government’s commitment to *‘putting sustainable development at the heart of government; creating a resilient and sustainable economy that lives within its environmental limits and only uses our fair share of the earth’s resources to sustain our lifestyles.’*

...

² Explanatory Memorandum, paragraphs 1-3

The Bill will result in a step change in the way in which specified public authorities improve the long-term economic, social and environmental wellbeing of the people and communities of Wales that they serve, leaving a better legacy for our children and grandchildren. It will ensure that sustainable development is embedded at the heart of specified public authorities, and that those authorities work together to improve the well-being of Wales by seeking to achieve a suite of statutory well-being goals.”³

³ Explanatory Memorandum, paragraphs 43-47

3. Legislative Competence

Explanatory Memorandum

10. In terms of the legislative competence to make the Bill, the Explanatory Memorandum indicates that 19 of the 20 subject paragraphs of Schedule 7 to the *Government of Wales Act 2006* are, to varying degrees, relevant to the making of this legislation. Only subject paragraph 13 (National Assembly for Wales) is not considered relevant.

Evidence from the Minister

11. The Minister told us that he was completely content that all parts of the Bill are within the Assembly's competence.⁴ He added that:

“... the department has been engaged with departments of the UK Government—the Ministry of Justice and the Home Office—with regard to activities around the Bill, and we have not been informed of any competency issues that the UK Government may or may not have.”⁵

12. On 5 November 2014, the Minister wrote to us stating that he had laid a proposed Order, under section 109 of the *Government of Wales Act 2006*, in accordance with Standing Order 25.⁶ The proposed Order—*The Government of Wales Act 2006 (Amendment) Order 2015*—seeks to amend Schedule 7 to the 2006 Act so as to confer legislative competence upon the Assembly to amend section 79 of that Act. Paragraph 5 of the Explanatory Memorandum⁷ on the proposed Order states that the Welsh Government hopes to bring forward an amendment to section 79 of the 2006 Act during the passage of the Well-being of Future Generations Bill.

13. We took evidence from the Minister about the proposed Order on 10 November 2014.

⁴ Constitutional and Legislative Affairs (“CLA”) Committee, *RoP [paragraphs 86-87]*, 6 October 2014

⁵ CLA Committee, *RoP [paragraph 89]*, 6 October 2014

⁶ [Standing Order 25 - Orders in Council to be made under the Act](#)

⁷ Welsh Government, *Explanatory Memorandum, Constitutional Law: Devolution, Wales, The Government of Wales Act 2006 (Amendment) Order 2015 - Proposal for an Order under section 109 of the Government of Wales Act 2006 relating to legislative competence to amend section 79 of that Act (sustainable development)*, November 2014

14. In accordance with Standing Order 25.7, the Business Committee referred the proposed Order to us on 11 November 2014, with a reporting deadline of 3 December.

Our view

15. We note that no issues have been raised with the Minister regarding the National Assembly's ability to make this legislation under Schedule 7 to the *Government of Wales Act 2006*.

16. We will report separately on the proposed Order in accordance with Standing Order 25.8.

4. General observations

Introduction

17. The Bill has 56 sections, in five parts, and four schedules.

18. Paragraphs 19-23 describe provisions of the Bill that were part of the focus of our scrutiny of the Minister.

19. The long title of the Bill, which would be expected to set out in general terms the purposes of the Bill and cover everything in it,⁸ states that it is:

“An Act of the National Assembly for Wales about how public bodies are organised to improve well-being in accordance with the sustainable development principle.”

20. Part 1 of the Bill sets out the key concepts of the Bill. In particular, section 1 (Purpose of this Act) states that:

“The general purpose of this Act is to ensure that the governance arrangements of public bodies for improving the well-being of Wales take the needs of future generations into account.”

21. Section 2 establishes the aim of public bodies to improve the economic, social and environmental well-being of Wales in accordance with the sustainable development principle. This aim is referred to as the “common aim” and the sustainable development principle is defined in section 3. Section 4 provides an overview of the main provisions of the Act.

22. Part 2 of the Bill establishes a set of well-being goals (section 6) which public bodies must seek to achieve when pursuing the common aim provided for under Part 1. According to the Explanatory Memorandum they:

“... collectively express a vision for the long-term economic, environmental and social well-being of Wales and provide a

⁸ *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, Twenty-fourth edition 2011, page 527

coherent framework to guide the improvement of this well-being in a sustainable manner.”⁹

23. Section 7 requires public bodies to set and publish well-being objectives which seek to maximise their contribution to the achievement of the well-being goals. Section 8 requires a public body to set and meet its well-being objectives in accordance with the sustainable development principle. According to the Explanatory Memorandum:

“Section 7, together with the provisions of section 8 of the Bill, constitutes the sustainable development duty.”¹⁰

Evidence from the Minister

24. The drafting and content of the Bill raise a number of general issues which we sought to explore with the Minister. These are:

- the short title of the Bill (Well-being of Future Generations (Wales) Bill);
- the need and purpose of the Bill; and
- the wording and concepts used in the Bill.

25. When we asked the Minister about the short title, he said:

“That is a really interesting question ... as part of a collective responsibility around Cabinet, we are all very keen to understand what the Bill means, and how that is communicated ... I think that the title of the Bill embraces what we are trying to achieve in terms of the general communication of what is in the Bill in content, and actually also taking it beyond. If I am perfectly honest, sustainable development is a strange concept for people to grasp, so we are talking about ‘future generations’, so it is a much more broad-ranging principle of change, for community ... the fact is that the title is simple and captures the spirit of the Bill complete.”¹¹

26. We also asked why the Bill was needed and what it aimed to deliver. In response, the Minister spoke of the need to communicate

⁹ Explanatory Memorandum, Annex 1 – Explanatory Notes, paragraph 22

¹⁰ Explanatory Memorandum, Annex 1 – Explanatory Notes, paragraph 28

¹¹ CLA Committee, *RoP [paragraph 91]*, 6 October 2014

the Bill's message.¹² He said "it is not an easy Bill in terms of understanding what the principles are" but that the Bill broadly encompasses the three strands of sustainability: the economic, the social and the environmental.¹³ He referred to the architecture of the Bill and added that:

"... the principle of the goals is the overarching principle of what the Bill is about—a sustainable Wales. Underneath that lies some progress indicators, and then who will be involved in the process, and then how that will be delivered—so, the issues around long-term challenge, the integration of services, collaboration, engagement, and prevention longer term. So, all those things, along with the goals and the sustainable governance national indicators, encapsulate change.

If I could liken it to a bit of a nudge-nudge process—it is about taking people from a different place and time, from where we are now, to a sustainable change and improvement. I think that what we can see, and what is not happening now, is that there is nothing in legislation that encompasses sustainable development within the ethos and governance of an organisation in the public sector. That is the difference from where we are now to what the Bill will deliver."¹⁴

27. The Minister provided a document showing the architecture of the Bill and this is included at Annexe 1.

28. We pursued the issue of the Bill's clarity with the Minister by questioning him on the multiplicity of concepts it contains and the absence of some accompanying definitions.¹⁵ He told us:

"It is about how we take people on a journey for change. Legislation being black and white is not helpful in this regime, because we are talking about a whole raft of public services that deliver many different things. However, never before have we had it in statute that, for example, a local authority will

¹² CLA Committee, *RoP [paragraph 93]*, 6 October 2014

¹³ CLA Committee, *RoP [paragraphs 93 and 95]*, 6 October 2014

¹⁴ CLA Committee, *RoP [paragraphs 97-98]*, 6 October 2014

¹⁵ Section 2 of the Bill introduces the 'aim of public bodies to improve well-being' whilst section 3 introduces the 'sustainable development principle'. Section 6 then introduces 'well-being goals' and section 7 'well-being objectives'. 'National indicators' appear in section 11, 'aims of public service boards' in section 34 and 'local well-being plans' in section 37.

have to consider the health needs of the community as well, or vice versa, that the health boards will have to look at the educational needs of individuals on the basis of wellbeing and sustainable development. Now, this will be at the heart of these processes.

... public services have to consider the impact on their local communities and, by working collectively ... have to look at how the way in which they create their policies in governance and process can have a positive effect, considering the goals that we have across the Bill ... it is about having a long view about what the collective effect of their decisions will be ... We think that the flexibility of the Bill gives enough room for authorities to respect the legislation in terms of what they know they have to do to improve, but it also gives them enough flexibility to change where change needs to be taking place locally.”¹⁶

29. We asked the Minister why there was no definition of “well-being” in the Bill. He said:

“... the wellbeing principle is defined by the goals attributed to the Bill. So, across the goals is a prosperous and resilient Wales and a healthy and more equal Wales, cohesive communities and a vibrant culture and thriving Welsh language. That is the principle of wellbeing as defined in this Bill. There is a very similar approach in section 60 of the Government of Wales Act 2006, in terms of how that defines it. So, this is not a bizarre concept that we just dreamt up. The principle of explaining what we mean by wellbeing is defined in the ‘goals’ architecture of the Bill. That is a very simple concept, I think.”¹⁷

30. On the definition of “needs”, the Minister said:

“... this is not a new principle—this is not a new concept. Local authorities and public sector bodies deal with this on a daily basis. Needs assessments for individuals, whether in health or education, is a general principle that is acknowledged by the public sector. Defining that means something different to all of those organisations, but it is a common term that is used in

¹⁶ CLA Committee, *RoP [paragraphs 106-107]*, 6 October 2014

¹⁷ CLA Committee, *RoP [paragraph 111]*, 6 October 2014

relation to what the needs of an individual are. Would it be helpful to define that in the Bill? I am not convinced of that, but, again, if it is a recommendation of the committee, then I would have to consider that very carefully.”¹⁸

31. We were aware of the comments made by the Auditor General for Wales to the Environment and Sustainability Committee regarding the potential conflict between the Bill and the *Local Government Measure (Wales) 2009*, such that the 2009 Measure could act as a barrier to implementation of the Bill.¹⁹ When we asked the Minister about the 2009 Measure and the need for the Bill, he said:

“Of course, the principle of doing this is contained in the local government Measure, in which there are seven strands of change, one of which is sustainable development. What we are saying here in public service in Government is that sustainable development should not be an add-on or an extra; it should be the core principle of doing business. That is why the whole ethos of creating public services and delivering them must have the principle of sustainability at the heart of it. That is where legislation, we think, is a consideration in all of the other aspects, but this puts it at the core. That is why we think that we need to legislate for this.”²⁰

32. The Minister indicated that he was not planning to revoke some or all of the 2009 Measure.²¹

33. He added that the Bill should be seen as complementary and that:

“... a review is intended by the Minister for Public Services, I think, to look at the local government Measure and the way in

¹⁸ CLA Committee, *RoP [paragraph 115]*, 6 October 2014

¹⁹ Written evidence to the Environment and Sustainability Committee’s public consultation on the Bill, WFG 20

²⁰ CLA Committee, *RoP [paragraph 100]*, 6 October 2014

²¹ CLA Committee, *RoP [paragraph 103]*, 6 October 2014; a footnote to the Minister’s evidence states that: “This is correct in the context of the discussion regarding Part 1 of the Local Government (Wales) Measure 2009 which relates to performance improvement, which is not being repealed by the Well-being of Future Generations (Wales) Bill (subject to the repeal of certain transitional and savings provisions relating to Part 1 of the Measure referred to below). However, the Bill does repeal Part 2, sections 48(2)(b), 50(5)(c) of that Measure, which relate to Community Strategies and Planning. The Bill also repeals section 51(3) of, and Schedule 3 to, that Measure which makes transitional and savings provisions in relation to Parts 1 and 2 of that Measure”.

which it operates.”²²

Our view

34. We are troubled by the view of the Minister that “legislation being black and white is not helpful in this regime”. Clarity of the law is absolutely essential to those who have to implement it. It also helps to ensure that the policy objectives and outcomes that the law seeks to achieve have a better chance of being delivered successfully.

35. Overall, on the basis of the Bill before us and the evidence we have heard, the precise purpose of the Bill is unclear. It is difficult to understand what it is seeking to achieve, the mechanism of delivery and how achievement will be measured, particularly in the absence of any national indicators on the face of the Bill.

36. There are a number of reasons why we believe the purpose of the Bill to be unclear.

37. In our view, the short title lacks the clarity that you would normally expect from a short title, edging more towards an aspirational objective rather than a concise, factual description of the Bill’s content.

38. The long title is surprisingly vague, particularly when compared to other Welsh Government Bills, such as the Planning Bill introduced on 6 October 2014.

39. Section 1 of the Bill, setting out the purpose of the Act, does not refer to sustainable development, although it is referred to in the long title and sections 2 and 3.

40. The composite effect of section 2 (Aim of public bodies to improve well-being) and section 3 (Sustainable development principle) appears to be:

“The aim of public bodies is to improve the economic, social and environmental wellbeing of Wales in accordance with the sustainable development principle of seeking to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.”

²² CLA Committee, *RoP [paragraph 103]*, 6 October 2014

Aiming to seek to do something is not very challenging, particularly for a piece of law aimed at public bodies.

41. The short title, the long title, sections 1 to 3 and the absence of any national indicators on the face of the Bill, when taken together, paint a somewhat confusing picture of what the Bill is seeking to achieve.

42. We also believe that the Bill is unnecessarily complex and would benefit from being simpler, with much more clearly defined concepts and objectives.

43. In our view the multiplicity of concepts (see paragraph 28 and footnote 15) adversely affects the clarity and usability of the Bill.

44. Linked to its complexity and overall lack of clarity, we have concerns regarding the lack of definitions in the Bill.

45. The aim of public bodies is said in section 2 to be “to improve the economic, social and environmental well-being of Wales”. “Well-being” is not defined, despite being a central concept.

46. Equally, the sustainable development principle is stated in section 3 to be “to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs”. “Needs” is not defined, despite being the cornerstone of a principle contained in legislation.

47. The concept of “improvement” is also not defined, despite the legislation being a starting point from which improvement can be assessed. The task to assess improvement could be assisted by using national indicators under section 11 to establish a base-line by which such matters may be judged; however there is currently no indication of what those indicators might be and as the Bill is currently drafted, they will be determined solely by the Welsh Ministers.

48. We acknowledge that it can be difficult to define adequately some of the concepts and phrases mentioned above. However, if they are to feature as central concepts within a Bill, then they should be defined to enable the reader to understand what the Bill is seeking to achieve.

Recommendation 1: we recommend that the Minister considers tabling an amendment to the short title of the Bill to provide a more factual description of its content.

Recommendation 2: we recommend that the Minister reviews the Bill with a view to tabling amendments that clarify the purpose of the Bill.

Recommendation 3: as part of reviewing the clarity of the Bill under recommendation 2, we suggest the Minister considers in particular:

- the accuracy of the long-title;**
- sections 1-3;**
- including definitions of “well-being” and “needs”;**
- clarifying how the concept of improvement is to be measured.**

Recommendation 4: we recommend that, if, as a consequence of recommendations 2 and 3, the Minister tables a significant number of amendments to the Bill at Stages 2 and 3, he should provide the Assembly with the opportunity to consider the Bill at Report Stage.

49. We are concerned about the potential conflict between the Bill and the *Local Government (Wales) Measure 2009*, as noted by the Auditor General for Wales, and we believe that the Minister must directly address this issue.

Recommendation 5: we recommend that during the Stage 1 debate, the Minister addresses concerns, raised by the Auditor General for Wales, regarding the potential conflict between the Bill and the *Local Government (Wales) Measure 2009*.

5. Powers to make subordinate legislation – observations on specific powers

Background

50. The Bill has 56 sections, in five parts, and four schedules.

51. The Bill contains 14 powers to make orders and regulations. These are summarised in Part 5 of the Explanatory Memorandum.

52. The absence of a comment or recommendation in respect of the procedure for the making of a particular piece of subordinate legislation is an indication that we are content with the procedure chosen.

Part 2 – Improving well-being

Section 11 – National indicators and annual well-being report

53. Section 11 places a duty on the Welsh Ministers to publish, and lay before the Assembly, national indicators. The Explanatory Memorandum says:

“These national indicators may be used to measure the progress being made across the public bodies towards the achievement of the wellbeing goals. Subsection (2) details criteria with which the national indicators must comply.

The Welsh Ministers may review and revise the national indicators at any time they consider appropriate. However they must, under subsection (3), review the national indicators should the well-being goals be amended. This is intended to ensure the national indicators remain aligned with the current well-being goals.”²³

54. No procedure is attached to the making of national indicators under section 11.

55. When we asked the Minister why no Assembly procedure was applied to the making of the indicators given their significance, the Minister said:

²³ Explanatory Memorandum, Annex 1 – Explanatory Notes, paragraphs 53 and 54

“... they are just figures and they are not targets. They are information sources from which people, such as the commissioner, the general public and public service boards, will be able to gauge progress. So, I believe that they are correctly placed in terms of assisting in knowledge as opposed to a target needing to be achieved by x, y or z body. It just helps in the improvement.”²⁴

56. We pursued this matter given the importance of the indicators and the possibility that without an Assembly procedure, a future government could simply choose the indicators that are most convenient for it. The Minister responded by saying:

“On benchmarking, an awful lot of data are currently available in terms of national indicators that we already publish. Of course, we are looking to streamline that, probably, so that we do not have as many national indicators, so that they are meaningful. I accept the principle of the Chair’s comments. In terms of developing the national indicators, as I said, they will be statistically based. There will be a process whereby we have to consult on these. Again, there is nothing prohibitive within the way the legislation is drafted currently, whereby Members or the Assembly or committees could not provide their view on the consultation process. I accept that there is nothing named in the Bill, but there is nothing prohibitive to suggest that that could not take place.”²⁵

Our view

57. Part 2 of the Bill is called “Improving Well-being”. As we have already indicated in Chapter 4 of this report, we believe that the national indicators are a fundamental component of the Bill given that, in the absence of baseline data, they will be the means by which any improvement in well-being will be judged.

58. Choosing the indicators to be used will have a significant effect on the outcomes.

59. We note the Minister’s commitment to consult but on its own that does not provide enough of a check and balance on matters of

²⁴ CLA Committee, *RoP [paragraph 121]*, 6 October 2014

²⁵ CLA Committee, *RoP [paragraph 129]*, 6 October 2014

considerable importance; the final decision about the choice of indicators would remain solely in the hands of the Welsh Ministers.

60. As part of the process of holding the Welsh Government to account for its actions, we believe that the Assembly should have a role in scrutinising and ultimately agreeing national indicators that are chosen in accordance with section 11. In our view, this approach would be in line with that proposed by the Welsh Government and endorsed by the Assembly in respect of the *Local Government Wales Measure 2009*; it provides for local government performance indicators to be specified by order, subject to annulment by the National Assembly. We expressed similar views in our report on the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill.

61. We believe that the affirmative procedure should apply to national indicators made in accordance with section 11. This will ensure that they are subject to a level of scrutiny that reflects their importance in helping to judge whether the Bill meets its objectives.

Recommendation 6: we recommend that the Minister should table an amendment to the Bill applying the affirmative procedure to the making of national indicators under section 11.

Part 3 – The Future Generations Commissioner for Wales

62. Part 3 and Schedule 2 establishes the office of the Future Generations Commissioner for Wales (“the Commissioner”). The Commissioner is required to promote the sustainable development principle and monitor and assess the meeting of the well-being objectives set by public bodies under Part 2 of the Bill.

Section 21 – Future generations report

63. Section 21 requires the Commissioner to prepare a report detailing the improvements public bodies should make in order to set and meet their well-being objectives in a manner consistent with the sustainable development principle. The Commissioner must publish this report before the end of the reporting period. The “reporting period” runs from the day after the Welsh Ministers publish their future trends report under section 12 of the Bill until the day one year and one day before the planned date of the next ordinary general election of the Assembly.

64. The Welsh Ministers may, by regulations, amend the definition of the reporting period. The regulations are subject to the negative procedure because they “would relate to technical detail which may be updated from time to time”.²⁶

65. When asked why the negative procedure was being applied to regulations that amend the Bill, the Minister told us that it “is purely a technical issue, effectively”.²⁷

Our view

66. In our view, the affirmative procedure should apply to the making of these regulations since they amend primary legislation and there is no limit on how this power may be exercised.

Recommendation 7: we recommend that the Minister should table an amendment to the Bill to apply the affirmative procedure to the making of regulations under section 21.

Section 23 – Joint-working

67. Section 23 makes provision for the Commissioner to work jointly with the Children’s Commissioner for Wales, the Commissioner for Older People in Wales or the Welsh Language Commissioner.

68. The Minister told us that:

“This provision is consistent with that for all the other commissioners in Wales in terms of the operation of working jointly. It is just a transfer of similar legislation in place that we are applying to this Bill in terms of a future generations commissioner as well. In an ideal world ... it would be nice if everybody got on all the time, but that is not always the case. Therefore, sometimes, you need some legislation to support the issue around working together. They may have differing views or a certain view on a policy or performance. This gives a legislative framework for commissioners to work together. Again, we are applying it as we have with other pieces of legislation that we have taken through the Assembly.”²⁸

²⁶ Explanatory Memorandum, Chapter 5, page 53

²⁷ CLA Committee, *RoP [paragraph 127]*, 6 October 2014

²⁸ CLA Committee, *RoP [paragraph 129]*, 6 October 2014

Our view

69. The purpose of this section is unclear. It is unnecessary to include a discretionary power in a Bill to permit organisations to work together: the absence of such a discretionary power would not prevent them from doing so. A legislative framework for commissioners to cooperate would only be necessary where the intention was to make it a duty to do so. We acknowledge, however, that while permission to cooperate may be unnecessary, there may be some merit in referring to the sharing of information and the use of joint documents.

Recommendation 8: we recommend that the Minister should review section 23 of the Bill, with a view to tabling amendments to remove any unnecessary provisions.

Section 31 – Changes in participation

70. Section 27 establishes that there is to be a public services board for each local authority area in Wales. Members of the public services board are listed in subsection (2). Section 28(1) specifies certain office holders or organisations that public services boards must invite to participate in the activities of the board (“invited participants”). Section 30(1) specifies certain other bodies that a public services board must involve in the board’s activities, which are known as “other partners”.

71. Section 31 would permit the Welsh Ministers by regulations to amend the membership of public service boards as set out in section 27(2), those invited to participate (section 28(1)) and other partners (section 30(1)). Subordinate legislation made in respect of amending section 27(2) and section 28(1) would be subject to the affirmative procedure because “changes to the list of statutory members or invited participants could have a significant impact on the bodies involved”.²⁹ The negative procedure is considered appropriate for amending section 30(1) since:

“... the obligations placed on the other partners are less onerous than those placed on statutory members and their role involves less participation than is the case for invited participants...”³⁰

²⁹ Explanatory Memorandum, Chapter 5, page 53

³⁰ Explanatory Memorandum, Chapter 5, page 53

Our view

72. Regulations that amend sections 27(2) and 28(1), amend primary legislation and in our view are rightly subject to the affirmative procedure. For the same reason, we believe that regulations that amend section 30(1), should also be subject to the affirmative procedure.

Recommendation 9: we recommend that the Minister should table an amendment to the Bill to apply the affirmative procedure to the making of regulations under section 31 that amend section 30(1).

Part 4 – Public Service Boards

73. Part 4 and Schedule 3 establishes statutory public services boards consisting of the main public services working in a local authority area. Part 4 establishes their aim in relation to improving well-being, referred to as the “local aim”.

Section 39 – Local well-being plans: role of community councils

74. Section 39 deals with the role of community councils. Subsection (1) requires them to take all reasonable steps towards achieving the objectives in the local well-being plan. Under subsection (2) only those community councils whose gross income or gross expenditure was at least £200,000 for each of the three financial years preceding the year in which the local well-being plan was published are subject to this duty. Subsection (3) permits the Welsh Ministers by regulations (subject to the affirmative procedure) to amend the criterion in subsection (2).

75. The Minister’s official told us that the figure of £200,000 derived from regulations made under section 39 of the *Public Audit (Wales) Act 2004*.³¹ We asked why the figure was considered appropriate and the Minister’s official said that it is the “threshold that is currently used”,³² adding that “it is something that is ... understood and is a fair and reasonable amount”.³³ She added that:

³¹ CLA Committee, *RoP [paragraph 154]*, 6 October 2014

³² CLA Committee, *RoP [paragraph 158]*, 6 October 2014

³³ CLA Committee, *RoP [paragraph 158]*, 6 October 2014

“It is something that is just in keeping with the existing provisions in relation to community councils. But, if it should change, our Bill can respond to that.”³⁴

Our view

76. We do not believe that it is good law to make the application of section 39 dependent on a community council’s level of income or expenditure, especially when there does not appear to be a clear justification for the figure chosen. While we do not believe such a situation would occur, such a provision could, in theory, permit a community council to absolve itself of the requirements of section 39, simply by reducing its income or expenditure. Providing for such a scenario within the Bill would appear to be at odds with the principle of improving well-being. In our view, it would make more sense for section 39 to apply all community councils, irrespective of income or expenditure. Appropriate guidance should be provided to smaller community councils on how best they could achieve the objectives contained in the local well-being plan.

Recommendation 10: we recommend that the Minister should table an amendment to apply section 39 of the Bill to all community councils, irrespective of their income or expenditure.

Part 5 – Final Provisions

Section 52 – Power to make consequential etc. provision

77. Section 52 contains a power to make consequential etc. provisions. It is worded to include provision “for the purposes of, or in connection with, giving full effect to a provision of this Act”.

78. We explored with the Minister why such a broad power is needed, and what use might be made of it.

79. The Minister’s official told us:

“This is just a common legislative provision, and it is really good drafting practice. It is sensible and limited, and it cannot be used widely. There are examples of this provision in the last four Assembly Acts: the Housing (Wales) Act 2014, the Agricultural Sector (Wales) Act 2014, the Education (Wales) Act 2014, and the

³⁴ CLA Committee, *RoP [paragraph 160]*, 6 October 2014

Social Services and Well-being (Wales) Act 2014. Basically, it cannot be used to do anything contrary to the provisions of the Act, and it is just there as a supplemental provision if any of the operative provisions need a supplemental provision to enable them to work as they were intended. That is what it is there for. So, it is a matter of making good law that can be usable, going forward.”³⁵

Our view

80. We have noticed that the *Housing (Wales) Act 2014*³⁶ and the *Social Services and Well-being (Wales) Act 2014*³⁷ use the expression ‘in consequence of’ whilst the *Agricultural Sector (Wales) Act 2014*³⁸ and the *Education (Wales) Act 2014*³⁹, as in the current Bill, use “in connection with”.

81. We believe that the construction “in connection with” provides Welsh Ministers with wider discretion to repeal or amend primary legislation than the words “in consequence of”. We do not believe that using “in connection with” is justified.

Recommendation 11: we recommend that the Minister should table an amendment to section 52(1) of the Bill to delete the words “in connection with” and insert in their place “in consequence of”.

Section 55 – Commencement

82. Section 55 contains a commencement power (by order) in relation to those provisions for which no date is stated on the face of the Bill. A power to make transitional or saving provision is included. No procedure is applied.

Our view

83. It remains our view that commencement orders that commence provisions other than by simply naming a date of commencement (by virtue of making transitional or saving provision) should be subject to scrutiny and the negative procedure.

³⁵ CLA Committee, *RoP [paragraph 168]*, 6 October 2014

³⁶ Section 144(1) of that Act

³⁷ Section 198(1) of that Act

³⁸ Section 16(1) of that Act

³⁹ Section 46(1) of that Act

Recommendation 12: we recommend that the negative procedure is applied to orders made in accordance with section 55(4)(b) of the Bill.

Annexe 1 Well-being of Future Generations (Wales) Bill [Architecture]

